IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.2281 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

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PRASHANT PANUBHAI SHAH
Versus
UCO BANK, A BODY CORPORATE CONSTITUTED

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 1,3 - 4.
MR MD RANA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 10/05/2007
ORAL JUDGMENT

(1) This petition has been preferred praying for following reliefs:

“27. The petitioner, therefore, prays that:-

A) This Hon'ble Court may be pleased to admit and allow this petition;

B) This Hon'ble Court may be pleased to declare the action of the respondent Nos.1 and 2 herein in dispossessing the petitioner of the suit property situated at Bungalow No.69, Lavanya Society, Opp. Dr. Jivraj Mehta Bhavan, Vasna, Ahmedabad, comprised in F.P. No.86, T.P. Scheme No.26 Mouje Vasna, Tal. City, Dist. Ahmedabad, as being illegal, unlawful, arbitrary, without jurisdiction and authority in law and violative of Article 14 as well as principles of natural justice and rules of fair play;

C) This Hon'ble Court be pleased to issue an appropriate writ, order or direction, directing the respondent No.1 and 2 herein to restore the possession of the suit property situated at Bungalow No.69, Lavanya Society, Opp. Dr. Jivraj Mehta Bhavan, Vasna, Ahmedabad, comprised in F.P. No.86, T.P. Scheme No.26 Mouje Vasna, Tal. City, Dist. Ahmedabad.

D) This Hon'ble Court be pleased to issue an appropriate writ, order or direction, quashing and setting aside the impugned order dated 13.04.2006 passed by the learned Chief Metropolitan Magistrate, Ahmedabad, below Exh.1 in Misc. Application No.210/2005, Annexure-'I' to this petition.

E) Pending hearing and final disposal of this petition, this Hon'ble Court be pleased to stay and suspend the operation, implementation and execution of the order dated 13.04.2006 passed by the learned Chief Metropolitan Magistrate, Ahmedabad, below exh.1 in Misc. Application No.210/2005, Annexure-I to this petition;

F) Pending hearing and final disposal of this petition, this Hon'ble Court be pleased to direct the respondents No.1 and 2 to restore the possession of the property situated at Bungalow No.69, Lavanya Society, Opp. Dr. Jivraj Mehta Bhavan, Vasna, Ahmedabad, comprised in F.P. No.86, T.P. Scheme No.26 Mouje Vasna, Tal. City, Dist. Ahmedabad, to the petitioner herein forthwith;

G) Ex-parte ad-interim relief in terms of prayer [E] and [F] above may kindly granted and the same be confirmed after notice to the respondents.

H) Be pleased to pass such other and further reliefs, as the nature and circumstances of the present case may require;

I) Be pleased to award the cost of this petition from the respondents;

(2) The respondent-Bank initiated action under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Securitisation Act) against respondent Nos.3 and 4 who had entered into a contract with the respondent No.1-Bank for availing of various financial facilities. As the borrower could not discharge the liability, notice under Section 13(2) of the Securitisation Act came to be issued on 08.10.2003. This was followed by notice under Section 13(4) of the Securitisation Act and ultimately taking over of possession under Section 14 of the Securitisation Act.

(3) The grievance made on behalf of the petitioner is that the petitioner has purchased the secured asset, namely, Bungalow No.69, Lavanya Society, Opp. Dr. Jivraj Mehta Bhavan, Vasna, Ahmedabad and is in possession of the said property as a bona fide purchaser. Despite

that, vide order dated 13.04.2006, made by the Metropolitan Magistrate, in Misc. Application No.210 of 2005, the petitioner has wrongly been divested of the possession and he seeks a declaration to the said effect as well as restoration of possession. Referring to provisions of Section 13(13) of the Securitisation Act, it was submitted that the ban imposed by the said provisions can apply in case of a transaction which is subsequent to notice under Section 13(2) of Securitisation Act, but in the present case, admittedly, the petitioner had entered into an agreement on 24.04.2002 to purchase the property for a sum of Rs.15,00,000/- out of which a sum of Rs.10,00,000/- had been paid on the date the said agreement was executed between the petitioner and respondent Nos.3 and 4. Subsequent thereto on 08.01.2003 the balance consideration having been paid the petitioner was put in possession as per supplementary agreement entered into by the parties on the said day, coupled with a Power

of Attorney in favour of the petitioner executed by respondent Nos.3 and 4. Thereafter, as respondent Nos.3 and 4 were not executing the sale deed the petitioner filed a suit for specific performance being Civil Suit No.730 of 2003 wherein ad-interim injunction came to be granted in favour of the petitioner in terms of Paragraph No.9(a) of the prayer clause. It is further the say of the petitioner that the petitioner was never informed about the property having been mortgaged with respondent No.1-Bank. Therefore it was contended that any action under the provisions of the Securitisation Act including taking over possession of the property in question be declared to be bad in law.

(4) An incidental submission in this regard was that subsequently vide application Exh.90 moved some time in December 2004 the petitioner impleaded respondent No.1-Bank and the said application came to be granted on 07.09.2005. Therefore, injunction which was

operating against respondent Nos.3 and 4 became operative against respondent No.1-Bank also. Despite that in September 2005 respondent No.1-Bank had moved the Metropolitan Magistrate seeking possession of the property under Section 14 of the Securitisation Act. That order dated 13.04.2006 was never served on the petitioner but on 26.12.2006 respondent No.1-Bank illegally took over possession of the property, after throwing out all the belongings in the presence of police, on the basis of the order dated 13.04.2006.

(5) Though various submissions have been made on behalf of the respondent-Bank it is not necessary to record and deal with the same in light of the view that the Court is inclined to adopt.

(6) It is an accepted fact between the parties that respondent-Bank has already initiated appropriate proceedings before the Debts

Recovery Tribunal against the borrower whereunder the petitioner has been subsequently joined as a party. The petitioner is claiming right in the property on the basis of an agreement to sell executed in favour of the petitioner by respondent Nos.3 and 4 and possession of the property on the basis of a supplemental agreement, coupled with Power of Attorney in favour of the petitioner. In absence of any registered sale deed the petitioner has filed the civil suit for specific performance in this regard. Therefore, in the first instance the petitioner is required to establish his right, title and interest in the property so as to challenge action under the Securitisation Act. The petitioner may do this by pursuing the civil suit which is already pending or by initiating appropriate proceedings under Section 17 of the Securitisation Act. In the event the petitioner is able to establish that the petitioner was wrongfully divested of the possession, the Debts Recovery Tribunal has

all the powers under sub-section (3) of Section 17 of the Securitisation Act to restore the possession.

(7) Hence, without entering into any discussion on merits of the controversy between the parties, the petitioner is relegated to avail of statutory remedy as well as the remedy of suit, which has already been initiated by the petitioner and the petition is rejected only on this ground of availability of alternative remedy.

(8) The petition is rejected. RULE discharged. Interim relief stands vacated.

(9) At this stage, the petitioner seeks continuation of the interim relief for a further period. The request is accepted and the interim relief shall continue for a period of a week from today so as to enable the petitioner to move the Tribunal under Section 17 Securitisation Act, if the petitioner so desires, without any further extension of the

same.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*